DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
477 MICHIGAN AVENUE
DETROIT, MI 48226-2550

March 12, 2010

REPLY TO
ATTENTION OF:
Engineering & Technical Services
Regulatory Office
File No. LRE-2010-00098-252

Kevin Pierard
Chief, Watersheds and Non-Point Source Programs Branch
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard, WW-16J
Chicago, Illinois 60604-3507

Dear Mr. Pierard:

We are writing in response to Michigan Department of Natural Resources and Environment's (MDNRE) Public Notice No. 09-52-0086-P, for proposed work by Woodland Road LLC, located in Marquette County, Michigan. According to the application dated August 4, 2009, and recent revisions, the project as proposed would impact over 27 acres of wetlands, and would require 79 culverted crossings, 17 stream crossings, enlargement of 3 bridges, and construction of 6 new bridges. The project crosses through headwaters and wetlands in the Escanaba, Michigamme, Dead, and Yellow Dog River watersheds.

Our comments are being submitted pursuant to Section 404(j) of the Clean Water Act, the regulations in 40 CFR §233, and further prescribed in the Memorandum of Agreement between the State of Michigan and the U.S. Environmental Protection Agency. We have also received correspondence from the Keweenaw Bay Indian Community concerning the proposed project, and a copy is enclosed for your review.

Project Purpose/Alternatives Analysis:

There are reasonable questions as to whether the purpose of the project is adequately portrayed. The applicant's stated purpose is "to construct a multi-purpose road to connect key industrial, commercial, and recreational areas in northwest Marquette County to US-41." The regulatory agency is responsible for defining the purpose and need in accordance with NEPA Regulations (Appendix B, 7.), the objective of the project (33 CFR 320.4(a)(2)(ii)), and the "overall project purpose" under the 404(b)(1) Guidelines, subsequent guidance, and corresponding MDNRE regulations.

Portions of the Supporting Documentation indicate that the main purpose of the proposed road is to haul ore from the proposed Kennecott Eagle Minerals Company (Kennecott) mine at Eagle Rock. Ore transport trucks will make an average of 50-75 round trips per day (or 12,000-18,000 per year) on whichever road alternative is chosen, compared to approximately 1700 trips per year by logging trucks. The preferred alternative also appears to be the most direct route

from the proposed mine to the proposed processing site at Humboldt, Michigan. MDNRE has granted a separate permit to Kennecott for work at the Humboldt site associated with ore processing and disposal. In our view, a more accurate project purpose would be "to deliver ore from the proposed Kennecott mine at Eagle Rock for processing."

The relationship of the road to the mine extraction and processing facilities begs the question of whether the proposed road is an integral part of the overall Kennecott mining operation. If the road is required to connect the proposed nickel mine at Eagle Rock with the milling operation and tailings disposal facility at Humboldt, these actions should be evaluated under one project. The Corps' regulations at 33 CFR, Part 325.1(d)(2) state that all activities which the applicant plans to undertake which are reasonably related to the same project should be included in the same permit application. There appear to be sufficient ties between the road and the ore processing facility to warrant review of these actions together. If permits are required for the mine itself, these also should be included. Our regulations require a holistic view of a project, and the public and the process are best served by evaluating projects in their entirety.

In the Economics section of the Wolf Lake Road South Alternative, the applicant states that factors to be considered in a review of feasible and prudent alternatives should include the applicant's prior purchase of several "key parcels of land" to provide borrow material, mitigation acreage, and road access for the Woodland Road alternative. The section goes on to state that "If the proposed Woodland Road route in this segment is not permitted as proposed, the economic impacts of these acquisitions should be considered..." Permit applicants may not bias permit application reviews by making substantial resource commitments in advance of permit decisions. This is one of the basic tenets of the National Environmental Policy Act, outlined in their regulations in Section 1506.1.

Impacts Analysis:

Water Quality/Wetlands

The proposed road will result in the loss of over 27 acres of wetlands in the Escanaba, Michigamme, Dead, and Yellow Dog River watersheds. The application quantifies the losses in the preferred alternative route, but does not provide an adequate comparison to impacts which would occur if one of the proposed alternative routes were chosen. The aquatic impacts resulting from a new road alignment crossing undisturbed wetlands and streams, differs from aquatic impacts caused by expanding existing roads and stream crossings which currently support commercial traffic. Areas with existing road crossings have already been degraded by the road footprint, increased runoff, and the introduction of pollutants from vehicular traffic. The marginal increase in aquatic impacts by altering existing roads versus aquatic impacts in relatively undisturbed aquatic systems requires a more detailed analysis.

The preferred alternative may result in the relocation of a portion of the snowmobile trail known as Trail 5, which appears to be within the proposed road footprint, however there is no

discussion of these foreseeable impacts, which would likely involve new wetland and stream crossings. A Kennecott map dated September 5, 2007 (not included in the application materials) shows proposed alternate snowmobile routes. None of the potential impacts of any of the routes are mentioned, nor is the need for the reroute discussed.

Potential impacts on aquatic resources resulting from ore and particulates lost during transport from the mine is not discussed for any of the alternatives. Furthermore, the alternatives do not evaluate the type and extent of impacts equally. Wetland acreages and types for all but the preferred alternative are taken from the National Wetlands Inventory maps with no field verification, which does not allow for meaningful comparison of wetland impacts across all alternatives. Under the Woodland Road Route Alternatives section, the Supporting Documentation states "...the stream crossings listed for each region described in the following text are only the primary stream crossings; the smaller stream crossings are not listed." A complete application requires all aquatic impacts to be listed and quantified. Impact assessment must be addressed in a manner which allows for meaningful comparison across all alternatives.

Biotic Impacts

In the alternatives analysis, the Supporting Documentation does not adequately compare the direct impacts of a new, year-round commercial traffic road, and upgrading existing commercial roads. It does mention that roads provide travel corridors for wildlife, and that the preferred alternative will create edge habitat, which benefits some wildlife species. However it fails to put this in context: ongoing logging operations in the surrounding area currently provide an abundance of edge habitat, and an existing snowmobile path provides a travel corridor along much of the proposed route, without the risks to wildlife of steady year-round traffic. The impacts analysis does not adequately address the difference in impacts on wildlife along the Woodland routes from the current vehicular use level and the proposed use (50-75 round trips per day by ore trucks, mine employee traffic, etc.). Impacts from increased noise levels, light, dust, and vibrations are not adequately addressed.

The Supporting Documentation identifies rare plant species, and mentions that bogs, bog lakes, and sedge meadows were encountered within the proposed impact area, but does not document the acreage of impacts to these rare communities. The alternatives analysis fails to compare the potential impacts of introducing invasive non-native plant species to rare plant

communities via a new road, versus limiting the introduction of invasive plant species by utilizing existing roads.

Secondary Impacts

In order to adequately address impacts, the MDNRE should request information from the applicant about other potential mining projects which could be expected to be served by the proposed Woodland Road in the foreseeable future, including expansion of the current proposed mine at Eagle Rock. Impact assessment must include a review of foreseeable impacts to areas which would be made accessible for development or resource extraction by the proposed road. In order to be complete the impacts analysis must describe in detail how current land use will alter along the preferred Woodland Road route. Over 80% of the preferred alternative route crosses land owned by GMO Renewable Resources LLC, Plum Creek Timberlands LP, and Kennecott Eagle Minerals Company, and Kennecott Eagle Land LLC. These companies should be able to supply current resource extraction figures and projections of how resource extraction will change on their properties accessible by the preferred Woodland Road route.

Section 404(b)(1) Analysis:

The Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material in CFR 40 Part 230 requires that the applicant overcome the presumption that a practicable, less environmentally damaging alternative site, outside special aquatic sites, exists. The project as proposed does not appear to accomplish this. Utilizing existing routes would limit additional aquatic impacts to areas which are already impacted by road crossings. Establishing appropriate speed limits, installing additional traffic lights, adding turn lanes, or widening intersections are some of the possible improvements to current county and local 4-season roads which would reduce safety concerns and provide an alternative for hauling ore, while continuing to provide existing access to US-41 for ongoing logging operations. Difficult grades, cited at 6% in some alternatives, are comparable to the 6-8% grades in the preferred alternative. Though it is not explored in the Supporting Documentation, the preferred alternative, like the other alternatives, would require road construction sufficient to support year-round use over steep terrain. Reconstruction of some existing commercial routes may offer an option of redesigning stream crossings to minimize some of the current crossing impacts, as is noted for portions of Triple A Road.

Objections by the public to upgrading public roads to accommodate ore truck traffic may be considered, but do not in themselves result in the removal of an alternative from consideration. After interstate and state highways, county roads are primary transportation routes and are used to transport commercial traffic. Current logging operations (which according to the Supporting Documentation, are not expected to increase), already use these routes. The argument that it is beneficial to locate truck traffic so as to bypass major transportation corridors lacks support.

Compensatory Mitigation:

Compensatory mitigation must be directly related to the impacts of the proposed activity and appropriate to the degree and scope of the impacts. The goal of compensatory mitigation is to replace aquatic resource functions lost as a result of a permitted activity. A portion of the lost aquatic functions occur in headwaters, and impacts occur across 4 watersheds. The mitigation plan states that 25.34 of the 37.51 acres of wetland rehabilitation and establishment in the Dead River and Michigamme River watersheds must occur in the Escanaba River watershed because adequate sites are not available. Proposed wetland establishment sites were chosen based in part on the location of sand and gravel borrow areas for construction of the proposed Woodland Road alternative. This is not a reasonable method to select mitigation sites.

33 CFR Part 332.3, Compensatory Mitigation for Losses of Aquatic Resources, states in part:

> When evaluating compensatory mitigation options, the district engineer will consider what would be environmentally preferable. In making this determination, the district engineer must assess the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project... In general, the required compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions and services, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources (including the availability of water rights), trends in land use, ecological benefits, and compatibility with adjacent land uses. When compensating for impacts to marine resources, the location of the compensatory mitigation site should be chosen to replace lost functions and services within the same marine ecological system (e.g., reef complex, littoral drift cell).

The application must quantify aquatic impacts, especially the following: the loss of headwaters and wetlands associated with headwaters, in each watershed; the loss of rare wetland plant communities, including bogs, fens, and wet meadows; and water quality degradation due to runoff containing pollutants, and clearly indicate how the loss of each of these features would be compensated. This is necessary to allow the MDNRE to fully evaluate whether compensation is possible for the unique functions lost within each of the four watersheds (i.e. headwaters areas, rare wetland types, etc.)

Conclusion:

The Woodland Road application is deficient in several areas, including reasonable comparison of alternative routes, an adequate 404(b)(1) analysis, and an adequate compensatory mitigation proposal. However, as a basis, the applicant should reexamine the purpose and scope of the project so that it includes all attendant features and is a single and complete project. This will allow reviewers to fairly consider aquatic impacts of the entire project, and reach fully

informed conclusions.

We appreciate the opportunity to comment on the proposed project. If you have any questions, please contact Jean Battle by telephone at (906) 228-2833, or by e-mail at Jean.M.Battle2@usace.army.mil.

Sincerely,

John Konik
Chief, Regulatory Office
Engineering and Technical Services

Enclosure

Copy Furnished

MDEQ, Smolinski (09-52-0086-P)
Keweenaw Bay Indian Community, Warner